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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC-00-068-52798

Office: California Service Center

Date: 07 NOV 2001

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

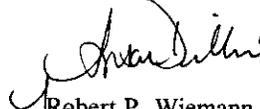


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INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is an e-commerce, marketing, and publication business with 42 employees and a gross annual income of \$1.5 million. It seeks to employ the beneficiary as a marketing analyst for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the beneficiary's degrees in Spanish and journalism did not qualify her for a market research analyst position. On appeal, counsel states that the beneficiary's educational background qualifies her for the proffered position. Counsel submits a letter from an academic expert in support of his argument.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record indicates that the beneficiary received a bachelor's degree in Spanish from a Taiwanese institution and a master's degree in journalism from a U.S. institution. The duties of the proffered position are described in pertinent part as follows:

In this position, [the beneficiary] will be responsible for analyzing Asiawired's current marketing and promotion services with our Asian corporate clients, which include government officials and business entities from Taiwan, Hong Kong and China, in order to implement more cost-effective methods for the company while still exceeding the needs of our clients. She will direct market research analysis and formulate marketing strategies for expanding our client base and will develop new services to attract more business. [The beneficiary] will gather information and perform data analysis in order to forecast market trends and determine clients' desirability of our services. She will also be responsible for preparing and devising analysis reports to our clients and make representations in major seminars and conferences. She will introduce the latest communication technology and develop more efficient procedures for communicating with our clients and will coordinate seminar and conference arrangements with entertainment and hospitality vendors such as hotels, restaurants, and air and ground transportation companies. Furthermore, she will be in charge of contacting print and broadcast media outlets in Asia and in the United States to publicize Asiawired's services, as well as of communicating at a sophisticated level in Mandarin Chinese verbally and in writing on complex technical and scientific issues as part of [our] promotion services. In addition, [the beneficiary] will be in charge of our high-technology business tours for

Asian executives. She will act as a bridge and as an interpreter to ease communication between the Asian executives and their US counterparts.

In these proceedings, the duties of the position are dispositive and not the job title. Although the above listed duties may include some market research analyst duties, the proffered position appears to be primarily that of a public relations, marketing, and advertising manager. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 25-26 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a public relations, marketing, or advertising manager. A wide range of educational backgrounds are considered suitable for entry into public relations, marketing, and advertising managerial positions. Some employers prefer a bachelor's or master's degree in public relations or journalism, but bachelor's degrees in various liberal arts fields are also acceptable. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The director has not determined whether the proffered position is a specialty occupation. Accordingly, the matter will be remanded to her to make such a determination and to review all relevant issues. The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.